APPEAL NO. 93387

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On December 3, 1992, January 27, 1993, and April 4, 1993, a hearing upon remand was held in (city), Texas, with (hearing officer) presiding as called for by Texas Workers' Compensation Appeal No. 92501, decided November 4, 1992. He determined that good cause was shown to add an issue of timely notice to the issue previously considered of whether claimant sustained a heart attack in the course and scope of employment. He also determined that notice was timely given, that the employer had actual knowledge, and that claimant had good cause for not providing notification beyond that given. Appellant (carrier) asserts that certain findings of fact and conclusions of law are in error in that the heart attack was not related to the job sufficiently to support either actual notice or timely notice. Claimant replies that the notice given was sufficient.

DECISION

Finding that the evidence is sufficient to uphold the decision and order of the hearing officer, we affirm.

In Texas Workers' Compensation Commission Appeal No. 92501, decided November 4, 1992, the appeals panel affirmed the determination of the hearing officer that the claimant had shown his heart attack was compensable under the standards set forth in Article 8308-4.15 of the 1989 Act. The hearing officer in the decision on remand made one finding regarding the heart attack itself, stating the date on which it occurred. There was no issue at the hearing on remand as to the heart attack itself and carrier's appeal of the decision on remand that attacks or reasserts attacks on any findings in regard to the heart attack itself are not considered. Determinations as to the heart attack itself were made in the original hearing and in Appeal No. 92501, *supra*, and will not be restated here. Appeal No. 92501, *supra*, and this appeal make up the final agency determination in regard to whether Transportation Insurance Company is liable under the 1989 Act to claimant for his heart attack of (date of injury), and hospitalization of January 9, 1992.

Appeal No. 92501, *supra*, did ask the hearing officer to provide opportunity for the carrier to "show cause" why an issue as to timely notice should have been considered in the determination of whether there was liability for this heart attack. The hearing officer heard the evidence in hearings dated December 3, 1992, and January 27, 1993, and found that the carrier did show cause for adding an issue as to notice to the issue of whether the heart attack was compensable under Article 8308-4.15. This determination by the hearing officer was not appealed and will not be discussed further. Having found cause to add the issue of notice, the hearing officer then allowed evidence, in addition to that presented at the original hearing, to be presented as to the notice issue. The hearing officer incorporated the evidence of the original hearing with that of the hearing on remand and found that the claimant gave timely notice, that the employer had actual notice, and that claimant had good

cause for giving no more notice than he did. The carrier, on appeal, attacked some findings of the hearing officer as to the issue of timely notice.

The carrier states that claimant did not relate the heart attack to the job and cites DeAnda v. Home Ins. Co., 618 S.W.2d 529 (Tex. 1980) and Texas Workers' Compensation Commission Appeal No. 91016, decided September 6, 1991. The DeAnda case does call for notice to indicate that an injury is job related. That case recites facts gained by an employer over a period of time. It notes that months before the injury in issue DeAnda told a nurse employed by the employer that he was "hurt" on March 29, 1974, and she treated him. That case considered evidence of actual knowledge to be sufficient in regard to an occupational disease of repititious physical trauma of the back since the employer made appointments for claimant to see a doctor. The court said, "[f]rom this evidence, the jury could have inferred that [employer] knew why it sent Mr. DeAnda to the doctor." This case did not say that the claimant had to tell the employer that the work caused the injury or even that the claimant had to use the words "job related" when telling the employer of the injury. It specifically allowed the finder of fact to infer in determining whether actual knowledge occurred. The use of inferences by DeAnda in regard to actual knowledge indicates that the fact finder may make inferences in determining whether notice sufficiently related the injury to the job.

Appeal No. 91016 is distinguishable from the case on appeal. In that case a claimant had a nonwork related back problem which was known by the employer; on the day in question the claimant merely reported for work with back pain and was sent home. There was no testimony that onset of pain occurred with activities at work. There was no evidence that the claimant in that appeal had incurred back pain while on the job the previous day, nor that she had previously injured the back while doing the same type work and reported that fact to the employer or an employee of employer, such as a nurse.

Williamson v. T.E.I.A., 127 Tex, 71, 90 S.W.2d 1088 (1936), dealt with good cause to delay filing a claim. The claimant in that case was unable to deal with matters to an even greater extent than was the claimant in the case before us on appeal, but the court's points are still applicable. In that case while Williamson was still in the hospital or near the hospital, the carrier talked to him about his injury, "and he believed his claim was being handled as it had been handled before." The court said that the evidence was conflicting, but that it raised an issue of fact. Later the court said that whether good cause exists for not filing a claim timely is "ordinarily a question of fact." More recently, Miles v. Commercial Ins. Co. of Newark, N.J., 568 S.W.2d 912 (Tex. Civ. App.-Waco 1978, no writ), considered evidence from many sources over a period of time in considering a notice issue.

Miles worked with kitchen cabinet doors. In September 1972 she hurt her back at work while lifting doors. She got sick at her stomach, but worked the rest of the day. She went into the hospital the next day. Her supervisor testified that he talked to Miles the day

after the injury by phone and that she told him she was sick and had to see a doctor. "He testified that plaintiff never told him that she hurt her back at work, and that the first time he learned she was claiming a job-related injury was more than a year later." An employee who administered benefits and insurance for employer testified that (within 30 days) claimant called from the hospital and inquired of her what "benefits she was entitiled to." The insurance employee further testified that she asked claimant what was wrong and how it happened; to which, claimant told her that she had stomach pain, vomiting, and back pain, but did not know how it happened. A coemployee, not a nurse, supervisor, lead lady, or dispatcher, said that claimant hurt her back picking up doors. She said that within four weeks EW asked what happened and she told her. (The supervisor said that Ms. W was not a lead lady or overseer.) Employees visited M in the hospital. A past supervisor of M testified that he heard at the time that M had a back injury. The court pointed out that M on appeal was claiming that the past supervisor knew within 30 days that she was injured on the job; the carrier maintained that the past supervisor did not testify that M indicated the injury was job related, only that she was hospitalized with a back injury. The court commented that M injury was known in the department supervised by her current supervisor and pointed out how easy it was for Ms. W when she returned from vacation to find out what happened. The court found the fact finder's decision that actual notice was not established was "against the great weight of the evidence," pointing out that it had considered the "whole record" in reaching that decision.

There is a great amount of similarity between the Miles case and the case on appeal. One difference, which can be argued as both harmful and helpful to claimant's position is that claimant had a prior workers' compensation injury claim. Some knowledge of the system can be inferred, indicating that he should have been more precise, but as in Williamson, *supra*, that past experience could be inferred also to have caused claimant to think that he had acted, and the employer had responded, similarly to the way he had before in regard to his back injury.

The carrier does not dispute the finding of fact that says (JS) is his supervisor. Claimant testified that he called this supervisor in January when he got out of the hospital, "I told him I went to get a load of cotton seed and I was hauling it back, and I had a heart attack, and had been in the hospital, and just got out." At the hearing on remand, claimant was asked the following:

Q.So, you didn't tell [JS] that is (sic) was work related; is that correct?

A.I did not.

Q.Okay.

A.No, I did not tell him that it was work-related.

Q.All right.

A.I told him what I was doing at the time.

. . . .

Q.Mr. S did you ever tell [JS] that you thought your heart attack was work-related within 30 days of it occurring?

A.Do you mean come out and tell him that in those exact words? No, I did not.

In comparing this event to the time he injured his back, claimant testified that he did the same thing both times. He called the dispatcher when he injured his back. His wife called the dispatcher after the heart attack because he could not. The same dispatcher was notified both times. This dispatcher assigned him his loads and told him where to go. Claimant testified that his wife called the same dispatcher on January 10, 1992. Claimant's wife testified that she called the dispatcher on January 10th and told her claimant was in the hospital in (city), had a heart attack, and that the truck he was driving was at the truck stop in Cisco. Claimant, on page 166 and 167 of the transcript, added the following in answer to questions about his telephone conversation with JS in January 1992, after his release from the hospital:

Q.Did you tell him that--Now, what do you mean when you said you told him what you were doing?

A.Well, I told him where I was, and that I was driving along, and when the chest pains started. I don't remember--I don't remember, to be honest with you, I don't know what all I told him. I was feeling very poorly at the time. But I did tell him that I had a heart attack; that I had had it while I was working. I didn't--

. . . .

Q.Did you talk about the day that you had--

A.I didn't tell him a whole lot. I told him that I was going to (city) to get a load of cottonseed. I got over there and had some truck trouble, and I ended up having a heart attack; and I had to end up and had to leave my truck over there.

The claimant had testified that on the date of the heart attack, (date of injury), he was told by the same dispatcher to change trailers in (city). He testified that the "fifth wheel," used to hold a trailer up when the tractor did not support the trailer, was stuck and that he struggled to get it in position to change trailers for two hours and 45 minutes when it should have taken 15. He struggled with the trailer and "made myself sick." He vomited. He had a "tightness in my chest." He sat down for awhile and felt better. He tried again and made progress but then he had a brake problem. He walked to the office and told the same dispatcher, as has been referred to previously in this appeals panel opinion, that he could not get the brakes unlocked. He told the same dispatcher that he was not feeling good. The dispatcher wanted to notify "Bob," but claimant did not wish to do that.

The carrier does not assert error in findings of fact that indicate that JS was the supervisor or that on (date of injury), the same dispatcher knew that claimant got sick from struggling with the fifth wheel. Both claimant and his wife testified that the wife called the same dispatcher on January 10th and told her of the hospitalization for a heart attack on January 9th and that the truck had been left in Cisco. Even without the testimony of claimant that he told JS that the heart attack happened on the job, notice that the truck had been left at a truck stop when claimant got sick indicated that some part of the incident happened while claimant was at work. Similarly, carrier does not assert error as to the fact that JS and the claimant talked by phone shortly after claimant's release from the hospital, where he had stayed for four or five days.

The hearing officer's finding of fact that says the dispatcher is the main contact point in regard to claimant's work is sufficiently supported by the evidence. This is the person the claimant had notified before about an injury. This is the person that claimant's wife looked to in notifying the employer of an expensive piece of equipment, the truck, and where it was. The dispatcher had been placed in the position by the employer to direct the movements of personnel and equipment. Notice to the dispatcher was not equivalent to a mere comment to a coemployee, particularly when it was in conjunction with notice as to the whereabouts of the truck and the fact that a driver could not drive it because he had a heart attack. This notice, when coupled with the dispatcher's actual knowledge of claimant's hard work and illness less than 48 hours before, together with claimant's notice to his supervisor right after he left the hospital that he had chest pain while driving (on the job) after having had truck trouble, is sufficient to support the hearing officers' conclusions as to notice and actual knowledge within the 30 days. As stated in the Miles case, the whole record supports the findings and conclusions that claimant gave adequate notice, coupled with the actual knowledge of the employer, that the heart attack was related to the job.

The decision and order are sufficiently supported by the evidence of record and are affirmed. We note that this decision should be considered with Texas Workers' Compensation Commission Appeal No. 92501, decided November 4, 1992, which held that the hearing officer's decision that claimant's heart attack was compensable under the

standards set forth in Article 8308-4.15 of the 1989 Act was also sufficiently supported by the evidence.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge